IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-1245-2019 (O&M).
Date of Decision: 09.01.2024.

IFFCO TOKIO GENERAL INSURANCE COMPANY LIMITED

... Petitioner

Versus

PARWINDER KAUR AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vishal Aggarwal, Advocate, for the petitioner.

Mr. Ashish Gupta, Advocate, for respondent No.1.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the award dated 12.02.2018, passed by the Permanent Lok Adalat (Public Utility Services), Karnal.

As per the averments contained in the writ petition, the respondent No.1-applicant had preferred an application before the Permanent Lok Adalat (Public Utility Services), Karnal (Annexure P-1) averring that her husband Charan Singh was the registered owner of a truck bearing registration No.HR-45-A-8075, which was insured with petitioner-Insurance Company vide Policy No.P-400-92368931 valid w.e.f. 13.05.2015 to 12.05.2016 for a total insured amount of Rs.12,80,000/-. Late Charan Singh, husband of respondent No.1-applicant died in a road side accident regarding which incident FIR No.142 of 2015 was registered under

Sections 279, 337 and 304-A of the Indian Penal Code, 1860 at Police Station, Samrala, District Khanna, Punjab. As an additional premium of Rs.100 was paid for extending insurance cover to owner/driver of the truck as well, hence, respondent No.1-applicant was entitled to an amount of Rs.2,00,000/- being widow of deceased Charan Singh. A claim along with all the supporting documents was submitted by the respondent No.1-applicant with the petitioner-Insurance Company. The said claim was, however, repudiated by the petitioner-Insurance Company on the ground that the same was not tenable as it does not fall under the purview of the policy.

Aggrieved by the aforesaid repudiation, an application was preferred before the Permanent Lok Adalat (Public Utility Services), Karnal.

On notice, the petitioner-Insurance Company entered its appearance and raised various objections regarding maintainability including that the claim was not tenable in view of the terms and conditions of the insurance policy. The record of the driving license of Charan Singh was not found in the office of Registering Authority, Nagaland and, hence, it was a fake and fictitious driving license. It was also contended that since deceased was not holding a valid driving licence, there was violation of the essential terms and conditions of the policy, hence, the claim in question was rightly repudiated.

Efforts for an amicable resolution of the dispute were undertaken by the Permanent Lok Adalat (Public Utility Services), Karnal, however, the same failed to fructify in settlement. Adjudication under

Section 22 C (8) of the Legal Services Authorities Act, 1987 was hence initiated by the Permanent Lok Adalat (Public Utility Services), Karnal.

Upon consideration of the rival submissions advanced and evidence brought on record by the learned counsel for the parties, the claim preferred by respondent No.1-applicant was allowed by holding as under:-

> *"12. In view of the above submissions and after careful perusal of the entire record as well as whatever the documentary evidence has been led during the prosecution of the petition, it is true that Charan Singh Son of Santokh Singh, resident of H. No. 74, Village Salarpura, District Karnal, Haryana bearing registration no.HR-45-A-8075 and was the registered owner of the vehicle as per the registration certificate Ex. P1. It is also true that it was valid up to 22nd May, 2013. It is quite unfortunate and this court is pity enough that at the young age, Sh. Charan Singh, husband of the present petitioner had died in the road side accident on 25.6.2015 and in this regard, a formal FIR No. 142/2015 was registered at police station Samrala, District Khanna, Punjab for commission of offences punishable under section 279/337/304-A IPC. The petitioner is a widow and the legal heir of the deceased who had claimed the loss caused to the vehicle as well as amount for causing the death of her husband. Further, the claim was repudiated merely or solely on two grounds i.e. that the driving license of the deceased was not valid or it was fake and fictitious. The other ground considered by the officials of the respondent was that the registration certificate had already been expired.*
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> *13. In the considered opinion of this court, both these grounds are not available to the respondents to repudiate the claim of the petitioner. As far as the driving license of the deceased as Ex. P3 is concerned, it is valid up to 14.12.2017 and absolutely*

there is no evidence to refute the validity and the authenticity of the driving license by the respondents. Merely taking a plea that there is no record available of the driving license of the deceased Ex.P3 was fake and fictitious; there is absolutely no cogent evidence to prove that any point of time the driving license Ex.P3 from the date of issuance was fake or fictitious. As such, this ground is absolutely not available to the respondents to repudiate the claim of the petitioner. As far as the second ground that the registration certificate Ex.P1 has already expired, it is also not available to the respondent to repudiate the genuine claim submitted by the petitioner as per the form-H issued under rule 62 (1) which is a certificate of fitness and as per this document, the certificate of fitness was valid up to 28.5.2016 whereas the death of the deceased Charan Singh was taken place on 26.6.2015 and more-so, the information was also obtained by the learned counsel for the petitioner under Right to Information Act wherein, it has been informed that the vehicle bearing registration No.HR-45-A-8075 was issued the fitness certificate with effect from 24.5.2013 to 23.5.2014 at serial no. 42 of the fitness register. Similarly, the fitness certificate was also w.e.f. 26.5.2014 to 25.5.2015 at serial no. 7621 and again, the fitness certificate was issued w.e.f. 29.5.2015 to 28.5.2016 against serial no. 17095 as per the record. Once a fitness certificate is issued authorizing to ply the accidental vehicle on the road, in that eventuality, the registration certificate Ex.P1 automatically deemed to have been extended. Hence this ground of repudiating the claim is also not available.

14. Now the question arises as to whether the petitioner is entitled to get any amount of the claim? If this question is answered in affirmative then the sole and important question which further arises for consideration of this court as to what amount the petitioner is entitled to? It is true that for *consideration of this Court, there are two reports of the surveyors one that petitioner which is Ex.P8 and the other one is that of the respondents who has been officially deputed by the respondent and has submitted his report Ex.R4. After considering all the aspects, the total loss which has been assessed by the official surveyor is Rs. 6, 30,000/-, Relying upon the report submitted on behalf of respondents, for causing the total loss of the accidental vehicle, the petitioner is entitled to get the amount of Rs. 6,30,000/-. As far as the claim for causing the death of the husband of the petitioner is concerned, since a specific amount of the premium of Rs. 100/- has been paid as mentioned in the insurance policy Ex. P2, the petitioner would further be entitled for Rs. 2, 00,000/- on account of death of her husband who was also a owner and it was also applicable in the case of the driver. The owner/ driver in this particular case is one of the same person who happens to be the husband of the petitioner.*

15. As far as the authority which has been relied upon by the learned counsel for the respondents reported as ***NARINDER SINGH VS. NEW INDIA ASSURANCE COMPANY LTD. Civil Appeal no. 8463 of 2014*** *is concerned, this court has gone through the authority but the ratio is entirely different which is not applicable on the facts and circumstances of the present case and render no assistance. Contrary to it, the authority which has been referred by the learned counsel for the petitioner titled as (SUMIT KUMAR AGARWAL VS. ORIENTAL INSURANCE CO. LTD.) (II) (2012) CPJ 73 (NC). This is relevant for the disposal of the present petition and squarely covered the issue involved in the present petition.*

Finally, with these observation, the petitioner is entitled to get the total amount of Rs. 6, 30,000/- (Rupees six lacs thirty thousand only) and Rs. 2, 00,000/- (rupees two lacs only) for *compensation which is directed to be paid by respondent within the period of two months, failing which, the petitioner would further be entitled to get interest @ 12% per annum for the defaulting period.*

In case, the amount is paid in that eventuality, all the documents and keys etc would be transferred in the name of the insured will be delivered to the respondents and they would be at liberty to deal with it as per the rules and guidelines issued from time to time. With these observations, the petition accordingly stands allowed and the award be drawn.

16. Under the provisions of the act contained in Section 22-D (1) and (4), the award made by this court is final and shall not be called in question in any original suit, application or execution proceedings. Further, as per clause (2) and (5) of that provision, this award shall be deemed to be a decree of a civil court and thus shall be executable as if it were a decree made by that court."

Aggrieved thereof, the present writ petition has been filed.

Learned counsel appearing for the petitioner has argued that the Permanent Lok Adalat (Public Utility Services), Karnal, has committed an error in failing to consider that there was no evidence with respect to the deceased Charan Singh holding a valid driving license. He draws attention of this Court to the information received by the petitioner-Insurance Company from the Registering Authority, Tuensang, Government of Nagaland Vide Memo No.DTO–T/MV/21/08/3063 dated 22.06.2016 to contend that as per the information received by the petitioner-Insurance Company, there was no record available in the office of the Registering

Authority, Tuensang, Government of Nagaland, with respect to driving license No.22337/TSG/PROF/2010 in the name of late Charan Singh. In the absence of any record available on the file of the Permanent Lok Adalat (Public Utility Services), Karnal, the legality and validity of the driving license held by the deceased was not established, hence, there was breach of material terms and conditions of the policy document. The respondent No.1-applicant thus was not entitled to claim any benefits under the insurance policy and the order of repudiation passed by petitioner-Insurance Company ought to be upheld. Relevant extract of the aforesaid communication dated 22.06.2016 attached as Annexure P-5 is reproduced hereinafter below:-

> "NO.DTO-T/MV/21/08/3063 *Dated: 22-06-2016.*
>
> *To,*
>
> *IFFCO-TOKIO General Insurance Co. Ltd.,*
> *Customer service Centre-North, 34 IFFCO House,*
> *3rd Floor, Nehru Place, New Delhi-110019.*
>
> *Sub: **VERIFICATION OF DRIVING LICENSE**.*
>
> *Sir,*
>
> *With reference to the subject cited above, this is to inform you that no record has been found/available in respect of Driving License No. 22337/TSG/PROF/2010 in the name of Shri. - Charan Singh in the office of the undersigned."*

Learned counsel for respondent No.1-applicant has, on the other hand, relied upon the award passed by the Permanent Lok Adalat (Public Utility Services), Karnal, and contended that the aforesaid document/information received by the petitioner is not a proof of the driving license being in force. Absence of record on account of not being traceable cannot *ipso facto* lead to a conclusive proof that the driving license was a fake or fictitious document. It is thus contended that since the petitioner-Insurance Company has repudiated the claim, the burden lies upon it to establish its case squarely within the exclusions so as to deny the beneficiary/insured the benefits that enure in her favour.

No other argument has been urged.

I have heard the learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance.

I am of the view that the reliance placed by petitioner-Insurance Company on the communication received from the Registering Authority, Tuensang, Government of Nagaland, to support his argument that the driving license held by late Charan Singh was forged and fictitious cannot be sustained or established.

A plain reading of the aforesaid information furnished by the Registering Authority/District Transport Officer, Tuensang, Government of Nagaland, shows that the same is to the effect that the record in relation to the above said driving license was not traceable or available in the office. The above said information is not the same thing that the driving license was forged or fictitious. A mere absence of record with the registering authority/transport officer, who itself is the custodian of the record, cannot be construed that the driving license did not exist or is a forged and fictitious document. The argument could have been valid if the registering authority would have reported that as per its record either "no license against that number has been issued" or "license at above number does not stand issued in the name of late Charan Singh." A non-availability of record leading to failure of verification thus cannot be judicially construed as proof of license being forged. The deceased cannot be put to a prejudice merely for loss of record for which he had no role. The burden of proof is required to be discharged by the Insurance Company, after the primary onus is discharged by the applicant, and establish on the basis of positive evidence about driving license being forged and the consequential breach of terms and conditions of the policy.

Further, the Permanent Lok Adalat (Public Utility Services), Karnal, is governed by the principles of natural justice, objectivity, fairness, equity and other principles of justice. As per Section 22 D of the Legal Services Authorities Act, 1987, a discretion once exercised is not to be ordinarily interfered with unless it is in conflict with the evidence on record or suffers from illegality, impropriety or perversity. Once the conclusions drawn by the Permanent Lok Adalat (Public Utility Services), Karnal, are not improbable and are borne out of the evidence brought on record, the said award is not to be ordinarily interfered with in exercise of the powers of judicial review merely because any other view is also probable. Substitution of its opinion for the opinion of the Permanent Lok Adalat (Public Utility Services), would not be appropriate for the High Court in exercise of its powers of judicial review. A discretion once exercised, would ordinarily be upheld unless the same is illegal, perverse, improbable or based on conclusions that are not sustainable or valid on an objective consideration of the evidence available on record.

Finding that no such circumstances exist, I do not find any ground to interfere with the award passed by the Permanent Lok Adalat (Public Utility Services), Karnal. Accordingly the present writ petition is dismissed and the award dated 12.02.2018, passed by the Permanent Lok Adalat (Public Utility Services), Karnal, is affirmed.

Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

January 09, 2024 **(VINOD S. BHARDWAJ**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No